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NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, Virginia 22201-4714

In re Application of

Maertens et al

Serial No. : 09/995,860

Filed : November 29, 2001

Attorney Ref No. : 2551-69

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.181, filed on July 14, 2004, to request the review and withdraw of the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the application was filed on November 29, 2001 with 14 claims.

On August 8, 2003, applicants cancelled claims 1-14 and added new claims 15-42. A restriction requirement was made on September 24, 2003 restricting the claims into nine groups, drawn to HCV vaccines and methods of their use. On October 24, 2004, applicants elected with traverse group I, claims 15, 36 and 40 drawn to a therapeutic HCV vaccine and a method of its use.

On January 15, 2004, the examiner rejoined the subject matter of Group II, drawn to a therapeutic HCV vaccine and a method of its use, with the subject matter of elected Group I and a first action on the merits was sent to applicants in which claims 15, 16, 18, 20-26, and 36-40 were rejected and claims 17, 19, 27-35 and 41-43 were withdrawn from consideration.

On July 14, 2004, applicants amended the claims and traversed the rejections as they applied to the newly amended claims. Applicants additionally filed the instant petition to request the review and withdraw of the restriction requirement along with this response.

On October 19, 2004, a final rejection was sent to applicants in which claims 15-17, 20-26, 36-39 and 43 were rejected and claims 27-35 and 41 and 42 withdrawn from consideration.

On February 22, 2005, applicants filed a request for continued examination, amendments of the claims and arguments supporting applicant's position.

On June 2, 2005, a non-final rejection was sent to applicants acknowledging applicants instant petition filed under 1.181, and Groups I-III, claims 16-17, 20-26 and 36-43 were rejoined and examined. Claims 16, 17, 20-26 and 36-43 were rejected in this office action and claims 27-35 remained withdrawn.

On August 12, 2005, applicants responded to the previous office action by amending the claims and traversing the rejections as they applied to the amended claims.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.181 to request review of the restriction requirement has been considered, in full to the extent that it applies to the amended claims.

It is noted that applicant's arguments regarding the rejoinder of Groups I-III are now considered moot in light of the examiners rejoining of groups I-III on 6/2/2005.

It is additionally noted that current claims 27-35, now withdrawn, are each drawn to a method in which the only active step is "administering a therapeutic HCV vaccine composition according to claims 16 to 17 to said mammal". This is the identical active step of claim 36, which is currently under examination. Since the only active step in each of claims 25-36 is identical, and claim 36 is currently being examined, the restriction requirement between claims 27-35 (original group IV) and claim 36 is hereby withdrawn because the groups are not distinct.

DECISION

For these reasons, the petition under 37 C.F.R. 1.181, to request review of the restriction requirement is **GRANTED**. As discussed above, original Groups I through III have already been rejoined and are under examination. Group IV, claims 27-35, are rejoined to the currently examined claims as a result of this petition decision.

The application will be forwarded to the examiner to take appropriate action as a result of this petition decision and to consider the amendments and arguments filed by applicants on August 22, 2005.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 5717273-8300.



George Elliott
Director, Technology Center 1600.